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estate to pass to the children, if any, of such second son. In case of his decease without children, the trust estate was to pass to the first son for life, remainder to his children, and, in case both sons died without issue, the whole estate was to pass to certain nephews of testator. The will further provided that the second son should have no power to sell, incumber, or anticipate the payment of his annuity. Held that, on the death of the first son without issue, the real estate devised to him for life passed to the trustee and became part of the trust, subject to be administered upon precisely the same trusts, and hence the annuity to the second son was not increased.

WILCOX *v.* WILCOX.

March 14, 1907.

[53 S. E. 588.]

1. Executors and Administrators—Payment of Annuity—Demand—Laches.—Where testator's daughter made demand upon the executor within a reasonable time for the payment of an annuity due under the will, which was probated in 1878, and he declined payment, assuring her that a delay in settling the estate was not only unavoidable, but beneficial to all parties interested, her claim was not barred by laches because she took no legal steps to collect it until 1905; the estate having been in the meantime under the control of the court, and the available property not more than enough to pay the estate's debts.

2. Wills—Annuity—Construction.—Testator provided for the sale of his residuary real estate within five years, and directed the payment of an annuity to a daughter until such sale and the division of the proceeds between her and his other children. Held, that he intended to limit the period during which the annuity should be paid to five years.

3. Same—Interest—Delinquent Annuities.—Interest is properly allowed on an annuity in arrears payable under a will.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 49, Wills, § 1847.]

4. Same—Construction—Charge of Annuity on Estate.—A will loaned certain property to the widow until her remarriage or death, provided for the sale of the residue, the proceeds of which, after the payment of debts and annuities to a daughter, were to be divided between his children, provided for the payment of the annuity until a division of the proceeds of the residuary estate, and provided that the property held by the wife should be distributed among the children upon her remarriage or death. Held, that testator intended to charge all his estate, other than that loaned to his wife, with the

payment of the annuity, to the exclusion of all other objects of his bounty.

5. Same.—All of testator's children shared equally in the property so loaned, upon the widow's remarriage or death.

NEAL & BINFORD *v.* TAYLOR.

March 14, 1907.

[56 S. E. 590.]

1. Sales—Contract—Construction.—A company sold defendants tobacco, to be paid for in "No. 1 ground Angostura tonka beans," and in a letter stated, "Understand we want the best article and perfectly pure." Various quantities of apparently unadulterated ground beans were furnished; the company not knowing that they were adulterated. The company's receiver notified defendants that they would be released from the cost of grinding the beans remaining undelivered and that only unground ones would be accepted. Held, that the contract required defendants to deliver pure unadulterated ground tonka beans, and that an adulteration containing 35 per cent. barytes and exhausted ginger was not a compliance with the contract; and authorized the receiver to stop the grinding and refuse the adulterated product tendered.

2. Same—Evidence—Weight.—Where defendants contracted to deliver pure ground Angostura tonka beans to a tobacco company, evidence held to show that all deliveries were adulterated, but of an apparently pure article, and that defendants knew the beans delivered were accepted under the belief that they were pure.

3. Same—Adulteration—Duty of Seller to Disclose.—Where defendants contracted to deliver pure ground Angostura tonka beans to a tobacco company, it was their duty to disclose any material adulteration, unless the same was known to the company; and in the absence of such knowledge an acceptance of an adulterated article would not prejudice the company's nor the receiver's right to demand further deliveries of unadulterated beans.

4. Appeal—Review—Harmless Error—Instruction.—Though an instruction be erroneous, if, from the evidence, no other verdict than one against the complaining party could have been rightly found, the judgment will not be reversed.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 3, Appeal and Error, § 4033.]

5. Trial—Refusal of Instructions—Inapplicability.—Where there was no evidence to sustain an instruction, it was properly refused.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 46, Trial, §§ 596-612.]